

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C', NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 3066/Del/2014
Assessment Year: 2006-07

GREEN PETALS CAPFIN PVT. LTD. A-4, SARVODAYA ENCLAVE, NEW DELHI - 110 017 (PAN: AABCG7125Q)	Vs.	INCOME TAX OFFICER, WARD 12(2), NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. K.P. Ganguli, Adv. & Sh. Ashok Kumar Jain, A.R.
Department by	Smt. Rinku Singh, Sr. DR.

ORDER

PER H.S. SIDHU, J.M.:

This appeal by the Assessee against the impugned order passed by the Ld. CIT(A)-XVIII, New Delhi in relation to assessment year 2006-07 on the following grounds:-

- i) That, on the facts and in the circumstances of the case, Commissioner of Income Tax (Appeal)-XVIII, New Delhi was not justified in confirming the addition of Rs. 20,00,000/- made by ITO, 12(2), New Delhi u/s. 68 of the I.T. Act as unexplained amount received from Sh. Devendra Kumar.
- ii) That, on facts and in the circumstances of the case, CIT(A), New Delhi was not justified in confirming an addition of Rs. 45,91,800/- made by ITO, 12(2), New Delhi

as unexplained unsecured loans obtained from Sh. Ashok Jain without any evidence and basing his conclusion on surmises.

- iii) That, on facts and in the circumstances of the case, CIT(A), New Delhi was not justified in confirming an addition of Rs. 2,28,03,800/- made by ITO, 12(2), New Delhi treating the transaction with M/s Subhre Jewellers Pvt. Ltd. as bogus and non genuine basing his conclusion on surmises.

2. The brief facts of the case are that the assessee filed its e-return on 28.11.2006 declaring income of Rs. 1,53,820/-. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act") and thereafter the case was selected for scrutiny. Statutory notices u/s. 143(2)/142(1) of the Act were issued in this case in response to which the A.R. for the assessee attended the proceedings and filed the details. During the course of assessment proceedings the assessee company was asked to furnish the complete narration of the entries in its bank account and furnish the Bank ledger, which reveals a receipt of Rs. 20 lacs on 13.4.2005 from Sh. Devendra Kumar vide Cheque No. 662792, which as per the narration from the bank ledger was a refund of loan. However, the AO observed that the assessee has failed to discharge the onus and as such addition of Rs. 20 lacs was made u/s. 68 of the Act being the unexplained credits appearing in the books of assessee. Secondly, as per schedule 'D' of the Balance Sheet the assessee company had taken fresh unsecured loans from Directors, Rs. 1,17,53,600/- from Shri Ashok Kumar Jain, r/o B-

7/116-A, Safdarjung Enclave, New Delhi (hereinafter refer to Ashok Kumar Jain -I) and another Rs. 45,91,800/- from also named Shri Ashok Kumar Jain (hereinafter refer to Ashok Kumar Jain II), r/o B-4/158, Safdarjung Enclave, New Delhi- 21. Vide AO's query letter dated 06.11.2008, the assessee company was asked to furnish the confirmation of unsecured loans from the Directors along with the copies of the bank statements showing the corresponding debit entries of payments made to the assessee company and copies of the ITR etc. In response to the above, the assessee company could furnish the confirmation along with the bank statements only from Shri Ashok Kumar Jain-I, however, only confirmation letter was filed from Shri Ashok Kumar Jain-II without furnishing either his ITR particulars or his bank statements from where his loan payments could be verified. Shri Ashok Kumar Jain-II had opening credit balance of Rs. 54,41,350/- out of which Rs. 2,01,800/- was adjusted against the share capital to which a further sum of Rs. 45,91,800/- was added during the year out of which Rs. 88,90,000/- was repaid during the year thus leaving a closing balance of Rs. 8,49,550/-. Although the closing balance of Shri Ashok Kumar Jain-II is only Rs. 8,49,550/- however the amount of loan which was raised during the year from him was Rs. 45,91,800/- which could not be verified in the absence of his bank statement or his ITR particulars. AO further observed that it has been judicially established that the primary onus is on the assessee to prove the identity, creditworthiness and genuineness of transactions in respect of cash credits in its books of account. AO further observed that the creditworthiness essentially means capacity in financial dealings or capacity to pay. The creditworthiness of a person is something

that is assessed by somebody while giving loan to the said person on arm's length basis. The bank assess the creditworthiness of the person while allowing it loan. The creditworthiness is reflected in the balance sheet of the person and also in the profit making capacity. The assessee company has received unsecured loan of Rs. 45,91,800/-. But the assessee failed to prove the genuineness of the transaction and creditworthiness of the creditor hence the assessee has failed to discharge its onus and thus addition of Rs. 45,91,800/- was being made u/s 68 of Income Tax Act being the unexplained credits appearing in the books of assessee. Thirdly, AO observed that Assesee in its return of income has shown sundry creditors to totaling to Rs. 3,12,43,944/-. The Assessee filed the details of these sundry creditors and on perusal of the same, the AO observed that the assessee is showing M/s Shubhre Jewellers P. Ltd. as its creditor for Rs. 2,28,03,303/-. Notice u/s. 133(6) was issued to this party to find out the genuineness of the transaction, but the same could not be served being the address was found locked and thus the same was served through affixture and again no compliance was made by the party. The assessee did not produce the party and also did not file any evidence which can support the claim of transaction entered with the said company by the assessee, hence, AO held since the assessee was not able to substantiate its claim, the addition of Rs. 2,28,03,303 was treated as income of the assessee. Thereafter, the AO assessed the income of the assessee at Rs. 2,97,07,364/- u/s. 143(3) of the Act vide order dated 29.12.2008. Against the AO's action, the Assessee appealed before the Ld. CIT(A), who vide his impugned order dated 28.02.2014 has partly allowed the appeal of the assessee and deleted the

addition of Rs. 1,58,411/- by observing that AO has not been able to establish as to how funds has been diverted from interest bearing funds to non-business funds. Against the impugned order, the Assessee is in appeal before us.

3. At the time of hearing Ld. Counsel for the assessee stated that the assessee has filed all necessary evidences for substantiating the claim of the assessee which has not been properly considered by the AO as well as by the Ld. First Appellate Authority, which is contrary to principle of natural justice. He further stated that AO has not made any enquiry on the documents filed by the Assessee and made the additions in dispute. Similarly, the Ld. CIT(A) has also not made any enquiry who is having the co-terminus powers. Finally, he stated that assessee has discharged its initial onus to prove the identity of the assessee company, creditworthiness and genuineness of the transactions in the matter and requested that addition in dispute may be deleted and in the alternative he requested that if this Bench is not agreed to delete the addition dispute, then the matter may be set aside to the AO to decide the issue in dispute fresh on the basis of evidences produced by the Assessee denovo and Assessee may be given opportunity for producing any further evidence.

4. On the contrary, Ld. DR relied upon the order of the AO, but he did not raise any objection for setting aside the issue in dispute to the file of the AO for fresh adjudication.

5. We have heard both the parties and perused the records available with us. With regard to addition of Rs. 20 lacs made u/s. 68 of the Act on account of unexplained cash credits, we find that this amount is not a cash

credit at all as alleged by the AO, as confirmation has been submitted that on 12.4.2005 sundry creditor Devender Kumar has paid Rs. 20 lacs by cheque no. 310045 of Dena Bank and received back on 10.5.2005 by cheque no. 525893, Indian Overseas Bank, alongwith bank statement pertaining to these transaction. Both the transactions were routed through banking channel by way of cheques. As regards Addition of Rs. 45,91,800/- on account of unsecured loans is concerned, we find that AO was of the opinion that the alleged creditor is not a man of means. For this he has relied on the balance sheet of M/s Mani Exports for AY 2007-08. Copies of bank account statement of Indian Overseas Bank; Yusuf Sarai Branch, New Delhi alongwith confirmation of Ashok Kumar Jain, are at Annexure 'B' at page no. 7-11 of the paper book. We further find that all the transactions were made by cheques. As regards addition of Rs. 2,28,03,303/- is concerned, the alleged creditor is sundry creditor and the transaction is due to supply of gold and jewellery. We note that this sundry creditor is an existing assessee with PAN AAICS3762N assessed at ITO Company Ward 1(1), the necessary confirmation alongwith the copy of PAN are at page no. 12-14 of the Paper Book. At the time of hearing Ld. Counsel for the assessee has filed a Paper Book containing pages 1-22 having the copies of confirmation of sundry creditors Devender Kumar alongwith Bank Statements (Annexure -A); confirmation of Ashok Kumar Jain alongwith Bank statements of Ashok Kumar (Annexure B); Confirmation of M/s Subhere Jewellers (Annexure C); Copy of Notorised Tripartite Agreement (Annexure C1) and proof of purchase of material by M/s Subhre Jewellers (3 invoices of IDSL), which has been sold to M/s green Petals Cap Fin Pvt. Ltd. and confirmations. After perusing

the aforesaid documentary evidences, we find that the assessee has mentioned the name of the parties, their addresses, PAN details, the Bank statements, confirmations of the investors / sundry creditors and also produced the sufficient documentary evidences before AO to prove the ingredients of Section 68 of the Act. Hence, we find considerable cogency in the submissions of the Ld. Counsel for the assessee that assessee has filed all necessary evidences for substantiating the claim of the assessee which has not been properly considered by the AO as well as by Ld. First Appellate Authority, which is contrary to principle of natural justice. We note that AO has not made any enquiry on the documents filed by the Assesee and made the additions in dispute. Similarly, the Ld. CIT(A) has also not made any enquiry who is having the co-terminus powers. In view of above discussions, we are of the firm opinion that Ld. Counsel for the assessee has filed all necessary evidences for substantiating the claim of the assessee which has not been properly considered by the AO as well as by the Ld. First Appellate Authority, which is contrary to principle of natural justice. Therefore, the additions in dispute needs to be adjudicated afresh at the level of the AO, after considering all the evidences filed by the AO. Accordingly, we set aside the orders of the authorities below and remit back the issues in dispute to the file of the AO for fresh consideration, after considering all the evidences, which has not been considered earlier and Assessee may be given an opportunity of being heard and for producing any further evidence. Since we have not commented upon the merit of the case, the AO is directed to keep in mind the aforesaid directions, while re-adjudicating the issues in dispute.

6. In the result, the appeal of the Assessee stands allowed for statistical purposes.

The decision is pronounced on 15th October, 2018.

SD/-

(L.P. SAHU)
ACCOUNTANT MEMBER

SD/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 15TH October, 2018.

“SRBHATNAGAR”

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

